



documents that was directed to the Tennessee Department of Correction, care of Jennifer L. Brenner, TDOC Senior Associate Counsel, with a designated service date of November 7, 2022. A copy of the subpoena at issue is attached as **Ex. 1**.

3. In compliance with Local Rule 45.01(d), a copy of the subpoena was transmitted to opposing counsel on November 3, 2022, before it was served upon the subpoenaed party. *See Ex. 2*. No Defendant objected to it at the time.

4. On November 7, 2022, the Plaintiff served the subpoena on the TDOC, care of Senior Associate Counsel Jennifer L. Brenner. *See Ex. 3*. Ms. Brenner responded: “Received. We’ll get started right away.” *Id.* at 1.

5. No objection was ever furnished by the TDOC in response to the Plaintiff’s subpoena under Fed. R. Civ. P. 45(d)(2)(B).

6. On December 7, 2022, the TDOC furnished the responsive liquidated damages reports attached hereto as **Ex. 4**. The TDOC did not, however, furnish the investigative report and video footage contemplated by the Plaintiff’s subpoena, stating: “The investigative report and video are protected by Tenn. Code Ann. § 10-7-504 and can only be disclosed with the protection of a court order.” *See Ex. 5*.

7. This is an inaccurate characterization of Tenn. Code Ann. § 10-7-504(a)(8)—a public records statute—which provides that: “[t]he court or administrative judge having jurisdiction over the proceedings shall issue appropriate protective orders, **when necessary**, to ensure that the information is disclosed only to appropriate persons. **The information contained in such records and reports shall be disclosed to the public only in compliance with a subpoena** or an order of a court of record.” *Id.* (emphases added).

8. Further, regardless of any other matter, a Tennessee public records statute

does not authorize the TDOC to refuse compliance with a federal subpoena.

9. Multiple subsequent demands that the TDOC comply in full with the Plaintiff's subpoena have gone unmet. *See Ex. 6.*

10. The TDOC never having lodged an objection to the Plaintiff's subpoena under Fed. R. Civ. P. 45(d)(2)(B), the Plaintiff is not in a position to move to compel compliance with the subpoena under Fed. R. Civ. P. 45(d)(2)(B)(i).

11. Instead, the Plaintiff's only mechanism to secure the TDOC's compliance with the subpoena is to ask this Court to hold the TDOC in contempt pursuant to Fed. R. Civ. P. 45(g). *See id.* ("The court for the district where compliance is required--and also, after a motion is transferred, the issuing court--may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.").

12. The TDOC has been served with the Plaintiff's subpoena.

13. The TDOC has failed, without adequate excuse, to obey the Plaintiff's subpoena.

14. The TDOC is knowingly and willfully refusing to comply with the clear, specific, and unambiguous terms of the Plaintiff's subpoena.

15. Accordingly, the Plaintiff respectfully moves this Court to hold the TDOC in civil contempt pending compliance with the Plaintiff's subpoena served on November 7, 2022.

Respectfully submitted,

/s/ Daniel A. Horwitz

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 14<sup>th</sup> day of December, 2022, a copy of the foregoing and all exhibits and attachments were sent via CM/ECF, or via email, to:

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